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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/821,837

04/12/2004

Robert Paul Linse

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EXAMINER

GILBERT, WILLIAM V

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

05/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/821,837	Applicant(s) LINSE, ROBERT PAUL	
	Examiner William V. Gilbert	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-11, 15, 20-24, 27-31 and 34-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-11, 15, 20-24, 27-31, 34-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a Final Office Action. Claims 6, 7, 12-14, 16-19, 25, 26, 32 and 33 are cancelled. Claims 1-5, 8-11, 15, 20-24, 27-31 and 34-40 are examined below.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Younes (U.S. Patent No. 5,118,217).

Claim 36: Younes discloses a system comprising a footing (proximate 17) having an elongated channel (15) extending in a direction parallel to the longitudinal axis of the footing, a support stand (A, 29) including a plurality of support members and a base (proximate 47) the support members (portion A) are in a common vertical plane (see Fig. 2, generally), the support members have a terminal end (proximate 46) secured to the base and a second terminal end secured to an apparatus (29) that

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receives a member (55) for connecting the support member to a building, and the apparatus has a turnbuckle (58) and the member (55) for connecting the support members to the building has a threaded member (proximate 58) received in the turnbuckle, the turnbuckle is between support members (see Fig. 2 where the turnbuckle is between two support members; e.g. see where turnbuckle, proximate 29 is between member 15 at the top of the figure and proximate "A" at the bottom of the figure, where proximate 15 and "A" are proximate two support members) and a skirting panel (30) positioned in the channel of the footing. The language "configured to connect said support members to the building" line 9 and "configured to connect said support members to said building" line 11 are statements of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 40: Younes discloses a system for supporting a building having a footing (proximate 17) having an elongated channel extending in a direction that is parallel to a longitudinal axis of the footing, a support assembly (A, 29, 51) comprising a plurality of support members (see Fig. 2), the

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members have a base (46, the two pieces extending on both sides of 47) the base having a U-shaped cross-section and a portion of the base extends along the support member and is secured to at least one of the support members (A) and a skirting panel (30) positioned in the channel such that a portion of the base in the channel is positioned between the skirting panel and a sidewall of the channel.

Claim 39 is rejected under 35 U.S.C. 102(b) as being anticipated by Landreth (U.S. Patent No. 4,186,160).

Claim 39: Landreth disclose a footing (46) with an elongated channel extending in a direction that is parallel to a longitudinal axis of the footing, a support stand (42, 44) including a plurality of support members and a base (44 is U-shaped in cross-section) and the base extends along the support member and secured to a support member (42), and a skirting panel (42, 48) positioned in the channel of the footing.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Landreth.

Claim 38: Landreth discloses a system having a footing (46) having an elongated channel (proximate 52) extending in a direction that is parallel to a longitudinal axis of the footing; the support stand includes a plurality of support members (42) and a base (portion in the channel), and a skirting panel (48) within the channel of the footing. While Landreth does not specifically disclose the support stand in a common vertical plane, a second support member (42) would be placed in

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the same channel and in line with a first support member that would result in a common vertical plane and a continuous skirting panel. Landreth also does not specifically disclose only three support members. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have only three members based on the necessity of the members and the length of the panel needed.

Claims 1-5, 8, 10, 11, 15, 20-24, 27-29, 31, 34, 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landreth in view of Hoffman (U.S. Patent No. 6,125,597).

Claim 1: Landreth discloses a system comprising a footing (Fig. 9: 46) having an elongated channel (52) that is in a direction parallel to a longitudinal axis of the footing, the longitudinal axis is equally distant from first and second sidewalls, the longitudinal axis of the channel is closer to a first outer sidewall than a second outer sidewall, a support stand (42, 44) having a plurality of support members and a base (where support member is in the channel), a skirting panel (48) within the channel of the footing (see Fig. 10, proximate 60). While Landreth does not specifically disclose the support stand in a common vertical plane, a second support member (42) would be placed in the same channel and in line with a first support

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member that would result in a common vertical plane and a continuous skirting panel. Landreth does not disclose a passage for receiving an anchoring rod passing through the footing. Hoffman discloses a footing (Fig. 5: 24) with a passage for receiving an anchoring rod (44: the passage receives the rod). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have a passage for an anchoring rod because the anchoring rod would aid in the stability of the system. Last, Landreth in view of Hoffman discloses the passage extends through the footing, but not that the passage extends in the direction from one sidewall to the base of the footing. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the anchor rod at an angle because inserting the rod at an angle would aid in moment resistance better than if the rod were vertical.

Claim 2: the base has a portion that extends in the channel (52) the portion positioned between the panel and sidewall of the channel.

Claim 3: the longitudinal axis of the channel is parallel to and offset from the longitudinal axis of the footing.

Claim 4: Landreth in view of Hoffman discloses a channel with sidewalls that are not parallel to each other (Hoffman:

Fig. 5: proximate 46 and 48). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the shape of the channel in Landreth as the shape in Hoffman in order to aid in the installation of the stand (Landreth 42).

Claim 5: the footing has a slot (proximate 66) that is at an angle to the longitudinal axis of the channel (the slot is parallel to the channel, which is an angle of 0 or 180 degrees).

Claim 8: Landreth in view of Hoffman discloses the passage extends through the footing, but not that the passage extends in the direction from one sidewall to the base of the footing. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the anchor rod at an angle because inserting the rod at an angle would aid in moment resistance better than if the rod were vertical.

Claim 10: the base of the support stand includes a first elongated portion in the channel and a second portion extending at an angle (the portion out of the channel is at an angle of 0 or 180 degrees) outside the channel of the footing.

Claim 11: the support members converge toward each other along their length in a direction away from the base (see rejection of Claim 1, above where more than one member would be

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placed in the same channel along the length of the footing, which would result in converging.)

Claim 15: the support portion (44) is a U-shape, which is a channel shape.

Claim 20: Landreth discloses a footing (46) having an elongated channel (proximate 52) extending in a direction parallel to a longitudinal axis of the footing, where the axis of the footing is equally spaced from first and second sidewalls of the footing, the longitudinal axis of the channel is closer to a first outer sidewall than to a second outer sidewall, a support assembly (42, 44) comprising a plurality of support members and a base (portion in the channel), the base having a portion in the channel of the footing, a skirting panel (48) positioned in the channel such that a portion of the base is between the channel and sidewall of the channel. Landreth does not disclose a passage for receiving an anchoring rod passing through the footing. Hoffman discloses a footing (Fig. 5: 24) with a passage for receiving an anchoring rod (44: the passage receives the rod). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have a passage for an anchoring rod because the anchoring rod would aid in the stability of the system. Landreth in view of Hoffman discloses the passage extends through the footing, but

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not that the passage extends in the direction from one sidewall to the base of the footing. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the anchor rod at an angle because inserting the rod at an angle would aid in moment resistance better than if the rod were vertical.

Claim 21: the support stand has support members (42, 44). While Landreth does not specifically disclose the support stand in a common vertical plane, a second support member (42) would be placed in the same channel and in line with a first support member that would result in a common vertical plane and a continuous skirting panel.

Claim 22: the longitudinal axis of the channel is parallel to and offset from the longitudinal axis of the footing.

Claim 23: Landreth in view of Hoffman discloses a channel with sidewalls that are not parallel to each other (Hoffman: Fig. 5: proximate 46 and 48). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the shape of the channel in Landreth as the shape in Hoffman in order to aid in the installation of the stand (Landreth 42).

Claim 24: the footing has a slot (proximate 66) that is at an angle to the longitudinal axis of the channel (the slot is parallel to the channel, which is an angle of 0 or 180 degrees).

Claim 27: Landreth in view of Hoffman discloses the passage extends through the footing, but not that the passage extends in the direction from one sidewall to the base of the footing. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the anchor rod at an angle because inserting the rod at an angle would aid in moment resistance better than if the rod were vertical.

Claim 28: the support members converge toward each other along their length in a direction away from the base (see rejection of Claim 1, above where more than one member would be placed in the same channel along the length of the footing, which would result in converging.)

Claim 29: the support member (44) includes a first terminal end secured to the base (42) of the support stand and a second portion. The phrase "for connecting the support members to the building" is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the

prior art structure is capable of performing the intended use, then it meets the claim.

Claim 31: the support members are channel.

Claims 34 and 35: the prior art of record does not specifically disclose only two support members or only three members. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have only two or three members based on the necessity of the members and the length of the panel needed.

Claim 37: Landreth discloses a system having a footing (46) having an elongated channel (proximate 52) extending in a direction that is parallel to a longitudinal axis of the footing; the support stand includes a plurality of support members and a base (portion in the channel), and a skirting panel (48) within the channel of the footing. While Landreth does not specifically disclose the support stand in a common vertical plane, a second support member (42) would be placed in the same channel and in line with a first support member that would result in a common vertical plane and a continuous skirting panel. Landreth also does not specifically disclose only two support members. It would have been obvious at the time the invention was made to a person having ordinary skill in

the art to have only two members based on the necessity of the members and the length of the panel needed.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Landreth in view of Hoffman as applied to claim 1 above, and further in view of Hoffman (U.S. Patent No. 5,953,874).

Claim 9: Landreth in view of Hoffman discloses the claimed invention except that the shape of the footing is a trapezoidal shape. Hoffman ('874) discloses a trapezoidal shaped footing. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have a trapezoidal shaped footing because the trapezoid shape provides better stability for the footing by lowering the center of gravity.

Claims 20, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Younes in view of Hoffman (U.S. Patent No. 6,125,597).

Claim 20: Younes discloses a footing (proximate 17) having an elongated channel (15) extending in a direction that is substantially parallel to a longitudinal axis of the footing, the longitudinal axis of the footing is equally spaced from first and second outer sidewalls of the footing and the

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longitudinal axis of the channel is closer to a first outer sidewall than to a second outer sidewall, a support assembly (A) comprising a plurality of support members (see Fig. 2) and a base (proximate 47), the base has a portion in the channel, a skirting panel (30) in the channel such that a portion of the base within the channel is positioned between the skirting panel and a sidewall of the channel. Younes does not disclose a passage for receiving an anchoring rod passing through the footing. Hoffman discloses a footing (Fig. 5: 24) with a passage for receiving an anchoring rod (44: the passage receives the rod). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have a passage for an anchoring rod because the anchoring rod would aid in the stability of the system. Landreth in view of Hoffman discloses the passage extends through the footing, but not that the passage extends in the direction from one sidewall to the base of the footing. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the anchor rod at an angle because inserting the rod at an angle would aid in moment resistance better than if the rod were vertical.

Claim 29: the support members have a first terminal end secured to the base (proximate 47) and a second terminal end

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secured to an apparatus (55) that receives a member. The phrase "for connecting said support members to the building" is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 30: the apparatus comprises a turnbuckle (58) and the member (55) includes a threaded member (proximate 55) received in the turnbuckle (58).

Response to Arguments

3. The following addresses applicant's arguments dated 24 January 2008:

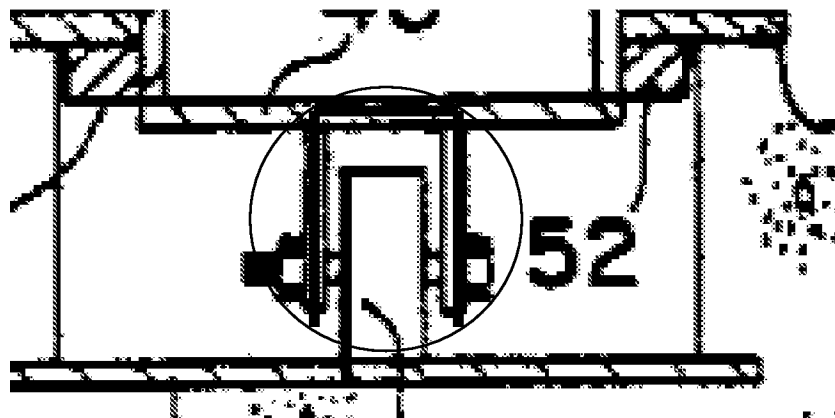
Claim Rejections - 35 USC §101

The action dated 26 July 2007 did not have this type of rejection, but claim objections to claims 1 and 20 were made. Applicant's amendments overcome the objection and they are therefore withdrawn.

Claim Rejection - 35 USC §102

Regarding claim 36, applicant's arguments are not persuasive. Applicant's amendment to the claim does not overcome the rejection. The phrase "configured to connect..." is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 40, applicant's argument is not persuasive. See the darkened portion from attached Figure 3, below, for the "U-shaped" member that is noted in the rejection above:



Attached Figure 3 from Younes

Regarding Claim 39, the examiner respectfully disagrees with applicant's arguments. While noted that applicant refers to a U-shaped base and the Landreth reference (cited above) labels member 44 a "top tie", the structural limitation is satisfied as no further limitation is provided regarding the base. As a result, the examiner interpreted member 44 to be a U-shaped member that satisfies the limitation as claimed.

Claim rejections - 35 USC §103

Regarding claims 37 and 38, while the examiner was taking notice as to the use of multiple panels being used in a common vertical plane, applicant requested citation of proper support. As a result, the examiner notes that it would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of duplication of parts to have this limitation because duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 274 F.2d 669 (CCPA 1960). See MPEP §2144.04.

Regarding claims 1 and 20, while noted that the prior art of record was modified for the attachment of the anchoring rod, the examiner maintains that the obviousness rejection cited above is proper to satisfy the limitations as claimed and the examiner provided rationale for the modification of the reference.

Please see MPEP 2144.01(IV) where the examiner's rationale can be different from the applicant. As a result, the examiner maintains the position of the obviousness of the combination of the references. The examiner did not take official notice of this, so no secondary reference was provided; however, rationale was provided to support the rejection (see above.)

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William

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V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./
Examiner, Art Unit 3635

/Basil Katcheves/

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Primary Examiner, Art Unit 3635